

**C.C.R.B CASE CLOSING FORM**

Investigator assigned: de la Cuesta		Team: 6	CCRB#: 9900471	<input checked="" type="checkbox"/> Force <input type="checkbox"/> Discourtesy  <input type="checkbox"/> Abuse <input type="checkbox"/> O.L. <input type="checkbox"/> Injury
Date of incident: 1/30/99	Time of incident: 10:30 PM	Location of incident: § 87(2)(b) § 87(2)(b)	Pct. of occurrence: 052	Date S.O.L. Expires: 7/30/00
Date reported: 2/1/99	Time reported: 10:09 AM	To whom/where/how reported: CCRB		
Complainant: § 87(2)(b)		Home address: § 87(2)(b)		
Victim(s): § 87(2)(b)		Home address: § 87(2)(b)		
Witness(es): § 87(2)(b) § 87(2)(b) § 87(2)(b) § 87(2)(b) § 87(2)(b) § 87(2)(b) § 87(2)(b)		Home address: § 87(2)(b) § 87(2)(b) § 87(2)(b) § 87(2)(b) § 87(2)(b) § 87(2)(b) § 87(2)(b)		
Subject officer(s) (include rank): Sgt. Jeffrey Miller PO Anthony Amodeo PO Daniel Malone PO Craig Collopy PO Erick Acevedo Unidentified Officer		Shield: 03138 16638 04392 21981 12656 00000	Tax: 900506 917227 902659 915474 901082 000000	Command: Bronx Street Crimes Unit (052 at time of incident) 052 052 052 052 000
Witness officer(s) (include rank): PO Joseph Fleischman		Shield: 22592	Tax: 919048	Command: 052
Allegation(s) by letter: A. Force: Sgt. Miller used physical force against § 87(2)(b) B. Force: PO Amodeo used physical force against § 87(2)(b) C. Force: PO Malone used physical force against § 87(2)(b) D. Force: PO Collopy used physical force against § 87(2)(b) E. Force: PO Acevedo used physical force against § 87(2)(b) F. Force: An officer punched § 87(2)(b) G. Force: An officer choked § 87(2)(b) H. Abuse of Authority: An officer threatened to mace and arrest § 87(2)(b) I. Discourtesy: PO Malone was discourteous towards § 87(2)(b)		Recommendation(s): A. § 87(2)(g) B. § 87(2)(g) C. § 87(2)(g) D. § 87(2)(g) E. § 87(2)(g) F. § 87(2)(g) G. § 87(2)(g) H. § 87(2)(g) I. § 87(2)(g)		

### Synopsis

Officers responded to a family dispute at § 87(2)(b) on a family dispute. § 87(2)(b) the complainant, advised officers that her son, § 87(2)(b) was an EDP (Emotionally Disturbed Person). While Sgt. Miller was interviewing the victim of the complaint, § 87(2)(b) § 87(2)(b) lunged towards Sgt. Miller and § 87(2)(b). The officers on the scene responded by taking § 87(2)(b) down to the ground and placing him in handcuffs. § 87(2)(g)

§ 87(2)(b) § 87(2)(b) alleged that while he was being handcuffed an officer gave him five quick jabs to the face. § 87(2)(g)

§ 87(2)(b) and the witnesses were unable to identify the officer that allegedly punched him. § 87(2)(b) and § 87(2)(b) failed to pick any officer from photo arrays that may have been involved in punching § 87(2)(b). § 87(2)(g) § 87(2)(b) was also unable to provide a description or identify an officer from the photo array as the officer that choked her and threatened to mace and arrest her. § 87(2)(g)

§ 87(2)(b) Lastly, § 87(2)(b) § 87(2)(b) alleged that PO Malone was discourteous towards her by cursing at her. PO Malone was the only officer that § 87(2)(b) accurately pick out of a photo array, § 87(2)(g)

### Summary of Complaint

§ 87(2)(b) stated that on January 30, 1999, at approximately 10:30 PM, § 87(2)(b) spouse, § 87(2)(b) called the police after having a fight with her son, § 87(2)(b). When the police arrived with EMS personnel, § 87(2)(b) explained to them that § 87(2)(b) has a history of stress and that twice before he has had to go to § 87(2)(b), for "mental counseling." Despite this, the officers "agitated the situation because my son was very angry" and wanted to "get back" at § 87(2)(b). The officers let him go and asked him, "You want to beat him up?" and said, "Go ahead, get your best shot. I'll have reason to take you downtown." § 87(2)(b)

§ 87(2)(b) stated that another officer was simultaneously talking to her husband in another room. This officer did not know what was going on in the hallway, thus, when § 87(2)(b) entered the room, he pushed § 87(2)(b) § 87(2)(b) then told this officer, "Your officers just told me I could have my best shot." Though she could not see what was happening, § 87(2)(b) heard this officer reply, "No, you're not," and then heard her husband and the officer laugh at § 87(2)(b) after which § 87(2)(b) began to scream. Instead of trying to calm § 87(2)(b) down, the officers threw him on the floor. She stated that he was already handcuffed, but that about five to six officers were punching him and kicking his face. When § 87(2)(b) began to cry and yell and tried to aid her son, two officers restrained her by holding her neck and arm. One officer took out his pepper spray and threatened to spray it in her face. When § 87(2)(b) mother heard the commotion and tried to enter the room, the officers told her to get back, then pushed her into her room and locked the door. One of her neighbors, § 87(2)(b), saw § 87(2)(b) on the floor bleeding and asked the officers what was going on. One of the officers threw him out of the apartment and told him, "If you knock on the door or try to come in again, we'll arrest you." She stated that most of her neighbors were outside and heard the officers cursing when they took § 87(2)(b) away. She stated that she did not see the officers push her mother, but then described how she saw an unidentified officer take her mother by the hand and escort her back in the room.

§ 87(2)(b) stated that the officer that told her son that he could hit her husband, was the arresting officer. He was short and chubby. The officers were punching her son in the face and ribs. She stated that the arresting officer hit her son, the officer with the dark hair and mustache and two "very young" officers also hit her son. The officer

with the salt and pepper hair kicked her son in the jaw. She stated that the two young officers were holding § 87(2)(b) and three other officers were punching him. The officer with the red hair punched § 87(2)(b) in the face. § 87(2)(b) stated that her son was not resisting. She stated that he had been handcuffed before being thrown on the floor. She stated that she went to his aid when she saw one of the officer's kick him. When she asked why they were doing that to her son, one of the officers grabbed her by the neck and told her, "You don't want to get arrested." She tried to pull away from his hold, but another officer grabbed her by the right wrist and twisted her arm behind her back. The officer with the red hair took out his pepper spray and told her, "One more move, and I'll spray you with this. So help me god, I'll spray you with this and I'll arrest you." She could not describe the officer who grabbed her by the neck or the one who grabbed her wrist.

#### Results of Investigation

PO Amodeo's memo book indicates the following, "2241 10-52F/§ 87(2)(b) . 2251 1 under 61# § 87(2)(b) Arrest # § 87(2)(b) § 87(2)(b) DOB § 87(2)(b) § 87(2)(b) 52<sup>nd</sup> Pct Begin Arrest processing EMS 84 at 52. ACR # § 87(2)(b) EMT# § 87(2)(b) ."

PO Collopy had no entries in his memo book regarding the incident. Sgt. Miller, PO Acevedo, PO Malone and PO Fleischman all indicate in their memo books that at 2240 a 10-34 was received for § 87(2)(b) and at 2251 1 under by 52E.

The Radio Run indicates that units 52E, 52ST2 and 52I responded to the location. The second portion of the Radio Run indicates that a male caller made the 911 call and that there were multiple injuries. The radio run states, "FC9female caller) § 87(2)(b) states lots of people involved." § 87(2)(b) also called 911 and stated, "Have multiple injuries."

The Command Log has an entry at 2310 which indicates, "PO Amodeo present with § 87(2)(b) § 87(2)(b) of § 87(2)(b) with a bloody lip and no funds for § 87(2)(b) § 87(2)(b) from § 87(2)(b) ."

The On Line Booking Sheet narrative states, "At TPO comp. § 87(2)(b) states that deft § 87(2)(b) did strike him with a closed fist in the face, causing laceration to his nose. Perp also fought with police." § 87(2)(b) was charged with § 87(2)(b) . § 87(2)(b) is listed as the complainant. PO Amodeo is listed as the arresting officer.

The UF61 Complaint Report narrative reads, "At T/P/O comp states that perp (Stepson) did punch him in or about the face the causing laceration to his nose and bruising and swelling to his eyes A/O further states that during presence of police perp did charge across apt towards comp perp stated 'I'm going to kill you.' While attempting to arrest perp did resist and fight back."

The Roll call indicates that 52ST2 was manned by Sgt. Miller and PO Fleischman, 52E was PO Amodeo and PO Collopy and lastly 52I was PO Acevedo and PO Malone.

An Aided Report was prepared for § 87(2)(b) by PO Amodeo. The narrative reads, "AT T/P/O aided was punched about the face causing laceration to his nose and bruising and swelling to eye. RMA"

Medical Records from § 87(2)(b) for § 87(2)(b) indicate, "Swelling and tenderness to the right side of the face and right mandible. Tenderness to Right wrist and right ankle" The final diagnosis is "Soft tissue swelling and musculoskeletal injury." Results of the x-rays taken indicate that there was no fracture to the right wrist or ankle. The x-ray to § 87(2)(b) face indicates "Soft tissue swelling by right zygomatic arch."

Medical Records from § 87(2)(b) for § 87(2)(b) indicate, "Negative bruises, negative swelling to the neck" § 87(2)(b) final diagnosis is listed as 'Musculoskeletal pain.'

Several attempts were made to interview Mr. § 87(2)(b) § 87(2)(b) insisted that he could not travel to Manhattan to be interviewed and three separate field visits were made to interview § 87(2)(b). § 87(2)(b) was not at home at the times that he had been scheduled to be interviewed. A subpoena was mailed via certified mail to § 87(2)(b) on December 6, 1999 for him to appear on December the 16. The letter was returned on December 10, 1999 with a note from the carrier, which indicates that § 87(2)(b) had moved and left no forwarding address.

Photo arrays for the six officers who had responded to the job was shown to § 87(2)(b) on January 13, 2000 but he was not able to correctly pick out an officer from the array. § 87(2)(b) picked out a filler officer from the array containing PO Collopy and stated that the officer was the one who punched him in the face. § 87(2)(b) made no mention of an officer kicking him during the incident.

Photo arrays for the six officers who had responded to the job were shown to § 87(2)(b) on January 13, 2000. § 87(2)(b) complained that she did not remember all that well and that she is not very good with faces. § 87(2)(b) picked out PO Daniel Malone in position #5 from Set#2 which contained five fillers. § 87(2)(b) stated that PO Malone was the officer who cursed at her and pushed her out of the way. § 87(2)(b) picked out a filler from the array containing PO Amodeo's picture claiming that the officer was the one who cursed at her.

According to § 87(2)(b) on January 30, 1999 at approximately 10:30 PM, he had an argument with his stepfather, § 87(2)(b) at his home at § 87(2)(b) in the Bronx. The two exchanged blows until his next door neighbor, § 87(2)(b), entered the apartment and stopped the fight. At some point, his stepfather called 911, and soon after, six officers initially arrived while two others, including Sergeant Miller, showed up later. Upon their arrival, § 87(2)(b) was still "kind of upset and riled up." PO 1 asked him, "What do you want to do?" to which § 87(2)(b) answered, "I just want a fair fight with him [his step-father]." PO 1 replied, "Alright, go ahead, but afterwards, I'm going to arrest you." § 87(2)(b) then said, "I'm going to get my fair fight;" the officer said, "Yeah, go ahead." When § 87(2)(b) walked into the other room where his stepfather was, Sgt. Miller turned around to look at him and said something he could not remember. Suddenly, an officer from behind spun him around during which he felt his legs give out. He fell to the floor where his face hit first; consequently, he had no chance to hit or attempt to hit his stepfather. On the floor, two officers were grabbing his right arm, three officers were grabbing his left arm, one cop was exerting pressure on his back with his knee, one was twisting his leg, and PO 1 was holding him in a head-lock. The last one eventually hit him five times in the face, which caused an open laceration to his lip and caused him to bleed onto the floor. § 87(2)(b) stated that he received his other injuries by explaining the following: the bruises on his arms were caused by the officers grabbing him and the bruise on his back came from PO 1 intentionally falling on him so that his elbow landed or jabbed into his back. He also explained that he never resisted and that he does not know why they charged him with attempted assault of an officer. He stated that he was kicked in the face and punched before he was handcuffed. Only one officer punched him in the face. He estimated that he was about five feet away from his stepfather when he was outside of the door. He stated that one officer put and kept his knee on the small of his back for forty - fifty seconds. He could not remember which officer, but stated that it was one knee, which was exerting pressure. He stated they did this to prevent him from getting up.

§ 87(2)(b) who is the victim's sister, stated that at the time of the incident she could not see what was going on between her brother and the officers, but heard her mother screaming at the officers to release § 87(2)(b). She then went into the hallway and saw § 87(2)(b) lying on the floor and bleeding. She observed officers holding her mother's arm and neck after which she went back into the kitchen. She then observed officers drag § 87(2)(b) out into the hall and her mother run outside.

According to § 87(2)(b) § 87(2)(b) boyfriend, who was visiting at § 87(2)(b) on January 30, 1999, § 87(2)(b) and her brother, § 87(2)(b) were involved in an argument. § 87(2)(b) stated that approximately eight officers responded to the apartment after § 87(2)(b) called 911. § 87(2)(b) stated that he could not describe the officers. There was one officer that stood in his mind, named Miller. He stated that he heard one of the officers tell § 87(2)(b) "what do you want to do?" § 87(2)(b) answered that he wanted to punch him (his stepfather) in the face. The officer said, "go ahead lock him up, we'll have a better reason to lock you up." Once § 87(2)(b) began to walk towards the room, the officers walked right behind him. Sergeant Miller was in between the doorway, talking to the stepfather. He stated that when § 87(2)(b) tried to go inside the room, Sergeant Miller pushed § 87(2)(b) out of the way, because he was not aware that the other officers told him he could go in the room. § 87(2)(b) told the Sgt., "your man says I can hit him." He stated that after that all the officers were on top of § 87(2)(b). One officer had him in a headlock, another grabbed him by the leg, one officer grabbing each arm, and another officer was holding on to a cage and kicking § 87(2)(b) on the head. He stated that he could not identify the officer who was kicking § 87(2)(b) and could not say for sure if he was kicked in the face, but stated that he did see an officer kick § 87(2)(b) on the head. § 87(2)(b) stated that he did not see § 87(2)(b) resisting arrest. He also stated that before he was taken down to the ground he told the officers three times, that if they wanted to arrest him, they could go ahead and do so. § 87(2)(b) stated that § 87(2)(b) was on the ground for about 45 seconds, at which time he was handcuffed. He stated that § 87(2)(b) was hit before he was handcuffed. He stated that he saw an officer jerk § 87(2)(b) by the arm and push her. He stated that when § 87(2)(b) was picked up off the ground, he was bleeding and his face was swollen. § 87(2)(b) stated that § 87(2)(b) was out of control, but also stated that at the beginning of the incident, the stepfather was out of control as well.

§ 87(2)(b) § 87(2)(b) sister, recalled that on January 30, 1999 at approximately 10:30 PM officers responded to § 87(2)(b). She stated that during the incident officers calmed § 87(2)(b) down, and one officer asked him, "What do you want to do?" After § 87(2)(b) said something she could not hear, the officer said, "Go and do it." When § 87(2)(b) started walking away, the officers "beat him down." One officer had his knee on top of § 87(2)(b) while other officers were on top of him holding him down so that he would not get up. § 87(2)(b) did not see the officers make contact with any part of § 87(2)(b) face. She could not describe any of the officers. When asked, she could not remember an officer with red hair, an officer with a black mustache, or an officer with salt/pepper hair. She also did not see § 87(2)(b) in the elevator with several officers. § 87(2)(b) saw one officer grab § 87(2)(b) by the wrist and force her to move away from the scene. She did not see any officers grab § 87(2)(b) § 87(2)(b) by the neck although she observed them pull her back and forth since she was trying to get away.

According to § 87(2)(b) the next door neighbor, on January 30, 1999, at approximately 10:00 PM, he was lying down in his mother's apartment at § 87(2)(b) when he heard a commotion at the § 87(2)(b)'s residence which is next door. After having run to their apartment, § 87(2)(b) separated the fight between § 87(2)(b) and his step-father by pulling the step-father aside; he subsequently removed § 87(2)(b) from the apartment and restrained him out in the building hallway where he advised § 87(2)(b) to calm down before the police arrived. At this point, § 87(2)(b) observed no injuries on § 87(2)(b) face. Along with EMS personnel, seven or eight officers arrived and told § 87(2)(b) to go back into his mother's apartment. He later heard noises from inside the § 87(2)(b) apartment, which sounded, like someone being beaten. He then exited his apartment and walked to the § 87(2)(b) door where three uniformed officers were standing not allowing anyone to enter or to exit. They told § 87(2)(b) to go back to his house. Since his view into the § 87(2)(b) apartment was partially blocked by the three officers bodies, § 87(2)(b) was not able to observe all that happened; however, he kept moving his head to look around the officers which allowed him to get glimpses of § 87(2)(b) being arrested twenty feet beyond from where he was standing. He was also able to see one officer grab and shove § 87(2)(b) twice as she was acting "hysterical." He also heard several officers yelling at her. Meanwhile, five officers were on top of § 87(2)(b) who was on his knees with his face down on the floor and his buttocks in the air. PO 1 was on § 87(2)(b) right side bent over him trying to grab or to hold him, while the other officers were trying to handcuff him or already had him

handcuffed. § 87(2)(b) clearly observed PO 1 punch § 87(2)(b) in the face once and heard (but did not see) the other officers hitting him. He also observed an act that looked like a kick as one of the officers jerked his leg towards § 87(2)(b) position. Since the officers obstructed his view, he could not see which officer or officers did this and could not see the foot or leg make contact with § 87(2)(b) body. He also saw one officer place his knee on § 87(2)(b) back to hold him down to the ground.

According to EMT § 87(2)(b) he responded to § 87(2)(b) on January 30, 1999 and observed several officers on the scene. EMT § 87(2)(b) estimated that there were approximately eight officers on the scene when he and his partner arrived. EMT § 87(2)(b) stated that there was a lot of commotion and § 87(2)(b) was very upset. § 87(2)(b) pacing back and forth in the hallway, but he was surrounded by officers. § 87(2)(b) told the officers that he was "really pissed" and that he wanted to hit his stepfather. EMT § 87(2)(b) stated that at one point § 87(2)(b) went towards the room where § 87(2)(b) was and the officers then took § 87(2)(b) into custody. EMT § 87(2)(b) stated that he could not see § 87(2)(b) because there were several officers on the ground struggling with § 87(2)(b). § 87(2)(b) was put to the ground at this point. EMT § 87(2)(b) added that he and his partner, EMT § 87(2)(b) where standing by the entrance door while this was taking place. § 87(2)(b) was on the ground and there were several family members and friends in the apartment who were screaming and yelling. EMT § 87(2)(b) was asked if he recalled § 87(2)(b) physical condition when he first arrived on the scene. EMT § 87(2)(b) stated that when he first arrived § 87(2)(b) did not need any medical attention and that his physical appearance appeared normal. When § 87(2)(b) was taken to the precinct EMT § 87(2)(b) and EMT § 87(2)(b) examined him at the precinct and § 87(2)(b) refused medical attention stating that he did not want to go to the hospital. § 87(2)(b) told EMT § 87(2)(b) that he had been punched in the face. EMT § 87(2)(b) describe the injuries, which were visible on the arrest photograph. According to EMT § 87(2)(b) it appears that the right side of § 87(2)(b) face is swollen as well as his lower lip. EMT § 87(2)(b) continued stating that there are abrasions below his right eye and on his nose.

EMT § 87(2)(b) stated that on January 30, 1999 he and his partner, EMT § 87(2)(b) responded to § 87(2)(b) on an EDP call. § 87(2)(b) had a few marks on his face, but EMT § 87(2)(b) stated that he would not even categorize the marks as abrasions. The family advised EMT § 87(2)(b) that § 87(2)(b) was "going wild" on his stepfather. The officers were listening to both sides of the story. EMT § 87(2)(b) stated that he noticed § 87(2)(b) enter into the room where his stepfather was and that he then noticed several officers go in after him. Approximately four or five officers grabbed § 87(2)(b) and according to EMT § 87(2)(b) § 87(2)(b) was not physically resisting, but he was screaming. EMT § 87(2)(b) stated that § 87(2)(b) was out of his line of sight for a short time, but when he approached he saw § 87(2)(b) on the ground and in handcuffs. EMT § 87(2)(b) stated that § 87(2)(b) was screaming and the family whom he had been speaking with turned around and headed for the area where § 87(2)(b) was being handcuffed. § 87(2)(b) was on the ground just outside the door to the third room on the left-hand side. As the family attempted to run over and see what was going on, officers then pushed the family back to about the doorway to the second room on the left hand side. EMT § 87(2)(b) stated that § 87(2)(b) mother attempted to get between the officers and § 87(2)(b). EMT § 87(2)(b) stated that he did not see any officer use force to keep the family apart from § 87(2)(b). EMT § 87(2)(b) stated that officers did push family back, but he does not recall if any officer threatened to use mace. The one thing that EMT § 87(2)(b) clearly remembers is that an officer did put his hands on § 87(2)(b) but no physical force was used. When § 87(2)(b) was lifted off the floor EMT § 87(2)(b) stated that § 87(2)(b) had a bloody nose. § 87(2)(b) was walked out of the apartment an officer told EMT § 87(2)(b) that if he wanted to treat § 87(2)(b) to go down to the 52<sup>nd</sup> Precinct.

According to PO Acevedo, he arrived § 87(2)(b) and was greeted at the door by § 87(2)(b) and several neighbors. § 87(2)(b) advised the officers that her son, § 87(2)(b) was violent and had just had a fight with his stepfather, § 87(2)(b). PO Acevedo went into the apartment and saw that § 87(2)(b) was highly agitated and that § 87(2)(b) had a bruise on his head. PO Acevedo stated that he then took § 87(2)(b) to a

back room to get his version of the incident. § 87(2)(b) was yelling and screaming, but PO Acevedo does not recall what § 87(2)(b) was screaming. The other officers stayed with § 87(2)(b). PO Acevedo does not recall exactly which officers were present. PO Acevedo stated that he spoke to Sgt. Miller and advised him of the situation and Sgt. Miller made the determination that § 87(2)(b) would be arrested. § 87(2)(b) began to charge towards Sgt. Miller and several officers grabbed him. Sgt. Miller stated, "Don't spray any mace. Don't spray any mace! Watch out for the fish tank!" PO Acevedo stated that there was a large fish tank in the hallway and Sgt. Miller was concerned that it may fall over onto an officer. § 87(2)(b) was put to the ground at which point § 87(2)(b) was handcuffed. PO Acevedo stated that he grabbed § 87(2)(b) but he does not recall how he grabbed § 87(2)(b). § 87(2)(b) was screaming and yelling and tried to stand up several times. PO Acevedo stated that he did not kick or punch § 87(2)(b) nor did he see any officer punch or kick § 87(2)(b). PO Acevedo stated that § 87(2)(b) approached the officers as § 87(2)(b) was being handcuffed and questioned why he was being arrested. PO Acevedo stated that he did not have any thing to do with § 87(2)(b) and is not certain who attempted to control or keep § 87(2)(b) from interfering with the arrest.

PO Amodeo stated that he arrived on the scene and spoke to § 87(2)(b) who stated that § 87(2)(b) had a mental history and tended to be violent. PO Amodeo stated that he kept § 87(2)(b) aside as the sergeant and another officer took § 87(2)(b) to a back room to get his version of the incident. § 87(2)(b) was uncooperative as the officers attempted to calm him down and all of the sudden § 87(2)(b) bolted towards his stepfather and then Sgt. Miller said, "Cuff this guy!". PO Amodeo stated that before making a run towards § 87(2)(b) § 87(2)(b) was calm and all of the sudden he freaked out and attempted to attack § 87(2)(b). § 87(2)(b) was taken down to the ground along with several officers. PO Amodeo stated that he did not hear an officer taunt § 87(2)(b) into attacking § 87(2)(b) but he was sure that an officer probably told him if he were to attack § 87(2)(b) he would be arrested. Several officers grabbed § 87(2)(b) and Sgt. Miller yelled out no mace, because there was an older woman with some kind of breathing apparatus in one of the rooms. Another officer was yelling, "Watch the fish tank!" Because it was a narrow hallway there was some fear that the fish tank may fall over and break so one of the officers leaned up against it. PO Amodeo stated that he does not recall how many officers it took to take § 87(2)(b) down, but he stated that he had hold of one of § 87(2)(b) arms. § 87(2)(b) was struggling on the ground and he continued to struggle more aggressively. PO Amodeo stated that he did not nor did he see any officer punch or kick § 87(2)(b).

PO Collopy stated that on January 30, 1999 he responded to the location on a family dispute call. When he arrived he was informed that § 87(2)(b) had struck his stepfather, § 87(2)(b). § 87(2)(b) was speaking to officers in the back room. One of the officers in the back was Sgt. Miller. § 87(2)(b) was agitated and said that he wanted to beat up his stepfather. It was then that § 87(2)(b) made a break towards § 87(2)(b). § 87(2)(b) was approximately 5 feet from the room where § 87(2)(b) was with Sgt. Miller. Sgt. Miller was standing in the doorway and it appeared as though he was going for Sgt. Miller. Sgt. Miller turned around and said, "Cuff him." An officer grabbed him and § 87(2)(b) was put down to the floor. There were a few officers trying to handcuff him. § 87(2)(b) was flailing his arms around while he was on the ground. PO Collopy stated that he assisted in handcuffing § 87(2)(b). PO Collopy stated that he grabbed § 87(2)(b) left arm and brought it out behind his back as another officer pulled his right arm behind his back. PO Collopy stated that he did not antagonize § 87(2)(b) to go and attack § 87(2)(b). PO Collopy stated that he did not see an officer hit Mr. Hernandez in the face or in any part of his body while handcuffing him.

PO Flieschman stated that on January 30, 1999 at approximately 10:30 PM, he responded to § 87(2)(b) on a radio run for a family dispute. Once inside he and his partner, Sgt. Miller, took the complainant, § 87(2)(b) to a back room where they were told that § 87(2)(b) § 87(2)(b) stepson, had assaulted him. PO Flieschman stated that while he and the sergeant were speaking to § 87(2)(b) attempted to attack § 87(2)(b). PO Flieschman stated that he does not recall how far § 87(2)(b) was from the back room, because he had his back to § 87(2)(b). As § 87(2)(b) made a run for § 87(2)(b) several

officers grabbed § 87(2)(b) and took him down to the ground. While on the ground § 87(2)(b) was flailing about trying to break free. PO Flieschman believes that it took at least two officers to handcuff § 87(2)(b) while he was on the ground. PO Flieschman stated that he did not see any officer kick or punch § 87(2)(b) while he was on the ground or otherwise.

According to PO Malone, when he responded to § 87(2)(b) for an assault on January 30, 1999 he found § 87(2)(b) arguing with his stepfather, § 87(2)(b) in the foyer of the apartment. § 87(2)(b) was taken to a backroom with some officers (PO Malone does not recall which officers). § 87(2)(b) was approximately twenty feet from the room where § 87(2)(b) was talking to officers. PO Malone stated that he stayed with § 87(2)(b) and attempted to get the story from § 87(2)(b) mother. In the apartment there were approximately four or five other civilians (the mother, brother and a few sisters). § 87(2)(b) was screaming and yelling obscenities as he flailed his arms and paced back and forth. At one point § 87(2)(b) lunged to the backroom towards his stepfather. At that point Sgt. Miller turned around and ordered that § 87(2)(b) be handcuffed. § 87(2)(b) was taken down to the ground. § 87(2)(b) continued to flail his arms about and push the officers off of him. PO Malone stated that he and several other officers struggled to grab § 87(2)(b) but he does not recall what role he played in handcuffing § 87(2)(b). PO Malone stated that he does not remember if any family member attempted to interfere with the arrest. PO Malone stated that he did not punch or kick § 87(2)(b) and that he did not see any officer kick or punch § 87(2)(b).

Sgt. Miller stated that on January 30, 1999 he and PO Flieschman responded to § 87(2)(b) to back up a unit on a violent family dispute. Sgt. Miller stated that when he arrived on the scene, § 87(2)(b) was standing out in the hallway just outside the apartment. § 87(2)(b) was highly agitated and Sgt. Miller stated that he then proceeded inside to the first bedroom on the left-hand side to speak to § 87(2)(b). § 87(2)(b) had cuts on his face from the fight with § 87(2)(b) and it was at this point that he knew that he was going to have § 87(2)(b) arrested. Sgt. Miller then stated that before he knew it § 87(2)(b) had charged in and was practically climbing over him to get to § 87(2)(b). Sgt. Miller stated that he turned slightly to the left and pushed § 87(2)(b) away. Sgt. Miller stated that he then ordered the officers to cuff § 87(2)(b). Sgt. Miller stated that initially only one officer grabbed § 87(2)(b) because he was calm. But when the officer attempted to put handcuffs on § 87(2)(b) he began to punch and kick. It was then that other officers jumped in and tackled § 87(2)(b) to the ground. § 87(2)(b)'s head was towards the front of the apartment and his legs towards the back of the apartment. § 87(2)(b) landed on the floor face first and continued to struggle. All the officers went to the ground including Sgt. Miller. § 87(2)(b) began to resist by moving around and pushing officers away. Sgt. Miller stated that he grabbed § 87(2)(b)'s legs to keep him from kicking. Sgt. Miller described how he grabbed Mr. Miller as lying across his thighs with both arms wrapped around § 87(2)(b)'s calves. Sgt. Miller stated that because he was facing away from § 87(2)(b)'s upper body he could not see who handcuffed § 87(2)(b) and how many officers were actually struggling with § 87(2)(b). § 87(2)(b) was screaming to let her son go. § 87(2)(b) repeated that he did not do anything and to not take him. Sgt. Miller stated that no officer touched § 87(2)(b) and that at no time was § 87(2)(b) maced or threatened to be maced. Sgt. Miller stated that he made sure that no one used mace at anytime because there were people in the apartment with oxygen or respiratory equipment hooked up.

#### Conclusions and Recommendations

§ 87(2)(g)

Medical records indicate that Mr. Hernandez had soft tissue swelling to the right side of his face as well as pain to his left elbow, right wrist and right ankle. § 87(2)(g)

§ 87(2)(b)

statement indicates that three officers were

punching § 87(2)(b) and one officer was kicking § 87(2)(b) in the head. § 87(2)(b) was not able to identify any officer from the photo arrays as actually punching or kicking § 87(2)(b). § 87(2)(b) insists that an officer gave him permission to attack his stepfather, § 87(2)(b) § 87(2)(b) a guest in § 87(2)(b) home, stated that he observed an officer that he could not identify kick § 87(2)(b) in the head. § 87(2)(b) § 87(2)(b) sister, § 87(2)(b), stated that she did not see what had happened with § 87(2)(b) but stated that she saw him on the ground bleeding. The neighbor, § 87(2)(b) stated that he observed an officer who he was not able to describe punch § 87(2)(b) in the face at least one time while he heard others hit him. § 87(2)(b) made this observation from just outside the entrance door because there was an officer in the way that would not allow him to enter the apartment. § 87(2)(b) also stated that he observed what appeared to be a kick, but justified it by saying he was "groggy" from a cold and his eyes were watery. Three separate individuals stated that § 87(2)(b) was kicked, but none of the three could provide a description of the officer that allegedly kicked § 87(2)(b) or the description of the officers who punched § 87(2)(b). § 87(2)(b) himself made no mention in his initial interview or in the follow up photo array interview of an officer kicking him. § 87(2)(g)

§ 87(2)(b) stated that the officer who was lying across his back, gave him five quick jabs to the face. § 87(2)(b) alleged that only one officer punched him in the face during his photo array interview as he had done during his initial interview. § 87(2)(b) identified one photograph in the array, but the officer, which he picked out, was a filler used in PO Colony's array. PO Collopy admitted to taking part in the arrest but stated that he had grabbed § 87(2)(b) left arm while he was on the ground face down. § 87(2)(b) § 87(2)(b), a guest in § 87(2)(b) home, said that when § 87(2)(b) went towards § 87(2)(b) the officers "beat him down." § 87(2)(b) did not elaborate on what beat him down actually meant, but she stated that she did not see any officer make contact with § 87(2)(b) face. She described the officers as being on top of him to keep him from getting up. Five of the six officers that responded stated that they took part in § 87(2)(b) arrest. Sgt. Miller stated that he threw himself across the back of § 87(2)(b) thighs and grabbed hold of his legs because he was kicking. PO Collopy stated that he had § 87(2)(b) left arm while PO Amodeo had the right arm. PO Malone and PO Acevedo stated that they assisted in placing § 87(2)(b) in custody, but they do not recall exactly what their roles were. The officers admitted that force was necessary to take § 87(2)(b) into custody, since he charged towards § 87(2)(b) who was speaking with Sgt. Miller. Sgt. Miller stated that he shrugged § 87(2)(b) off when he attempted to get by and that was when § 87(2)(b) was taken down to the ground. Officers described it as tackling § 87(2)(b) down since he was clearly going after his stepfather. The officers stated that they did their best to control § 87(2)(b) and put him in handcuffs immediately.

§ 87(2)(g)

No officer admitted to punching § 87(2)(b) nor did any officer state that he saw another officer punch § 87(2)(b) EMT § 87(2)(b) and EMT § 87(2)(b) both stated that they noticed that § 87(2)(b) was bleeding after he had been placed in handcuffs, but neither stated that they saw any officer punch or kick § 87(2)(b) § 87(2)(b) who was present the entire time could not identify any officer involved in the altercation with her son. The one civilian that could have possibly identified the officer that may have been punching § 87(2)(b) was § 87(2)(b) § 87(2)(b) refused to be interviewed. Several attempts to interview him were made, but § 87(2)(b) would either find an excuse to cancel or leave before the time of his interview. § 87(2)(b), § 87(2)(g)

§ 87(2)(b) also alleged that officers held her by her neck and cursed at her. Medical records from § 87(2)(b) list § 87(2)(b) diagnosis as musculoskeletal pain. The examination to her neck showed, "negative bruises, negative swelling." § 87(2)(b) § 87(2)(b) daughter, stated that she observed officers

holding her mother by the neck and arm, but did not offer a description of the officers. EMT § 87(2)(b) and EMT § 87(2)(b) stated that they were getting information from § 87(2)(b) and that when § 87(2)(b) was being handcuffed, § 87(2)(b) went towards the arrest location. According to the Emergency Medical Technicians there was one officer doing crowd control when § 87(2)(b) was arrested. PO Frieschman stated that he handled crowd control and that at no time did he grab or curse at § 87(2)(b). § 87(2)(b) identified PO Malone as possibly being the officer that cursed at her, but did not say that he grabbed her by the neck. § 87(2)(b) also identified PO Amodeo as being on the scene, but did not identify what he did during the arrest. EMT § 87(2)(b) stated that he did not see any officer push or grab § 87(2)(b) while he was in the apartment. EMT § 87(2)(b) stated that he left the apartment after § 87(2)(b) was taken out of the apartment.

Allegations A, B, C, D and E allege that the officers used force when they were attempting to take § 87(2)(b) into custody. Sgt. Miller admitted to pushing § 87(2)(b) off by shrugging § 87(2)(b) off at which point officers Amodeo, Acevedo, Collopy and Malone tackled § 87(2)(b) to the ground. The officers stated that it appeared as though § 87(2)(b) had attacked Sgt. Miller. § 87(2)(b) stated that he hit the ground face first and then the officers piled up on him and grabbed him. Once § 87(2)(b) was on the ground, Sgt. Miller stated that § 87(2)(b) was resisting and for that reason he threw himself across § 87(2)(b) thighs and grabbed hold of his legs. § 87(2)(g)

EMT § 87(2)(b) and EMT § 87(2)(b) stated that they observed the officers follow § 87(2)(b) as he charged towards the back room where § 87(2)(b) was talking to Sgt. Miller. Both Emergency Medical Technicians stated that § 87(2)(b) appeared to be highly aggravated before he entered the room and § 87(2)(b) was pacing back and forth. § 87(2)(b) stated that an officer told him that he could go ahead and punch § 87(2)(b) but he would then be arrested. None of the officers stated that they gave § 87(2)(b) permission to attack § 87(2)(b) moreover, the officers indicated that they tried repeatedly to calm § 87(2)(b) down. § 87(2)(b) and § 87(2)(b) both stated that they heard an officer give § 87(2)(b) permission to attack § 87(2)(b) before they tackled § 87(2)(b) § 87(2)(g)

§ 87(2)(b) insists that an officer who he could not identify said, "Go ahead, that will give us a reason to arrest you." § 87(2)(g)

§ 87(2)(b) admits to attempting to attack § 87(2)(b) in his presence, § 87(2)(b) caught Sgt. Miller off guard as he advanced and § 87(2)(b) was agitated and wanted nothing more than to hurt § 87(2)(b) § 87(2)(g)

PO Collopy stated that he believed that § 87(2)(b) was about to attack Sgt. Miller and that was when he and the other officers grabbed § 87(2)(b). According to the officers on the scene, § 87(2)(b) was contained and secured away from where § 87(2)(b) and Sgt. Miller were speaking, surrounding § 87(2)(b) did this. According to EMT § 87(2)(b) § 87(2)(b) was pacing back and forth. Patrol Guide Procedure 106-11 which discusses Emotionally Disturbed Persons (EDP's) states, "If the emotionally disturbed person is armed or violent, no attempt will be made to take the EDP into custody without the specific direction of a supervisor unless there is an immediate threat of physical harm to the EDP or others present." § 87(2)(g)

Patrol Guide 106-11 discusses force and states; "Physical force will be used ONLY to the extent necessary to restrain the subject until delivered to a hospital or detention facility." § 87(2)(g)

Allegation F states that an unidentified officer punched § 87(2)(b). § 87(2)(b) stated that while on the ground he received five quick jabs from an officer who he did not identify. § 87(2)(b) picked out a filler from a photo array and stated that the officer was the one that punched him in the face. The array contained the photograph of PO Collopy, but § 87(2)(b) did not pick him out. None of the witnesses that stated they saw an officer punch § 87(2)(b) provided a description of the officer. § 87(2)(b) EMT § 87(2)(b) and EMT § 87(2)(b) stated that they did not see any officer punch § 87(2)(b) § 87(2)(b) § 87(2)(b) stated that he heard officers punching § 87(2)(b) from outside in the hallway. § 87(2)(g)

[REDACTED]

§ 87(2)(b) alleged that an officer grabbed her by the neck and then twisted her arm (Allegation G) and that the same officer threatened to mace and arrest her (Allegation H). § 87(2)(b) stated that when she walked out of the kitchen she noticed that there was an officer holding § 87(2)(b) by the neck and arm. § 87(2)(b) did not provide a description of the officer nor was she able to provide a name or shield number. No one else observed the force allegation that § 87(2)(b) is alleging with the support of her daughter, § 87(2)(b). No officer would have reason to grab § 87(2)(b) by the neck and the medical records from Bronx Central indicate negative signs of swelling or bruising one day after the incident took place. EMT § 87(2)(b) and EMT § 87(2)(b) stated that they did not see any officer use any force on § 87(2)(b). EMT § 87(2)(b) simply stated that an officer simply preformed crowd control duties by keeping the family back as § 87(2)(b) was being arrested. § 87(2)(g)

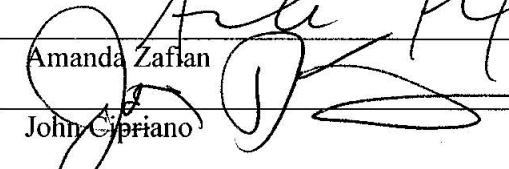
[REDACTED]

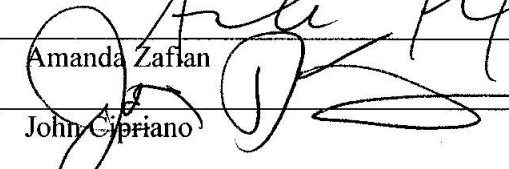
On the other hand, § 87(2)(b) identified PO Malone as the officer who cursed at her after § 87(2)(b) was arrested. § 87(2)(b) indicated that she believed he was the officer, but could not say with any degree of certainty that PO Malone did in fact curse at her. § 87(2)(b) did not articulate what exactly it was that PO Malone may have said to her and she never mentioned in her initial interview that an officer cursed at her, she simply stated that an officer threatened to mace and arrest her. PO Malone stated that he never cursed at § 87(2)(b) and that he had minimal contact with the family on the scene. § 87(2)(g)

[REDACTED]

Investigator:  Date: January 18, 2000

Supervisor:  Date: January 18, 2000

Reviewed by:  Date: January 18, 2000

Reviewed by:  Date: